(1)

Supreme Court, U.S.
FILED

95-628 OCT 12 1995

OFFICE OF THE CLERK

No. 95-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Rodney G. Gregory, Esq.
Counsel of Record
Matthew P. Farmer, Esq.
Law Office of Rodney
G. Gregory, P.A.
3900 Atlantic Blvd.
Jacksonville, FL 32207
(904) 398-0012
ATTORNEYS FOR PETITIONER

October 11, 1995

63 pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented by this petition are:

1. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants constituted deliberate indifference in violation of the detainee's Fourteenth Amendment rights as a pretrial detainee, does the Eighth Amendment deliberate indifference standard apply, or a more protective standard based either on the Due Process Clause or the Fourth Amendment?

2. Given that the Eighth Amendment protects convicted prisoners from only that degree of punishment that can be characterized as cruel and unusual, should the Eighth Amendment deliberate indifference standard apply without modification to jail suicide cases, involving accused juvenile citizens detained pending trial who are

entitled to a presumption of innocence and who, unlike convicted prisoners, may not be punished?

3. In regard to the estate of a pretrial detainee in a jail suicide case occurring in a county jail, is a claim of municipal liability limited to the sheriff administering the jail, or is the county properly named as well?

4. In evaluating claims by juvenile pretrial detainees that the acitons of the individual defendants and county jail constituted deliberate indifference in violation of the detainees Fourteenth Amendment rights as a pretrial detainee, can Appellate Courts substitute their findings of fact for disputed facts of record to form a basis for affirming the granting of a Motion for Summary Judgment?

CERTIFICATE OF INTERESTED PERSONS

1. Richard Blount - Defendant/Respondent
2. Kevin J. Cardin, Esquire
3. Margaret Carrow - Plaintiff/Petitioner
4. Donald Eslinger - Defendant/Respondent
5. Matthew P.Farmer, Esquire
6. Douglas Fauls - Defendant/Respondent
7. Rodney G. Gregory, Esquire
8. Matthew GIll - Defendant/Respondent
9. Julius F. Parker, Jr., Esquire
10. Bonnie Sabia - Plaintiff/Petitioner
11. Seminole County - Defendant/Respondent

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	1
CERTIFICATE OF INTERESTED PERSONS	3
TABLE OF CONTENTS	4
TABLE OF AUTHORITIES	5
OPINIONS AND ORDERS BELOW	8
JURISDICTION	8
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	9
STATEMENT OF THE CASE	10
A. Course of Proceedings in The Court Below	10
B. Statement of Facts	12
C. How the Federal Question was Presented	15
REASONS FOR GRANTING THE WRIT	
THE COURT SHOULD GRANT CERTIORARI BECAUSE THE CIRCUITS ARE DIVIDED ON THE CONSTITUTIONAL STANDARD APPLICABLE TO AN IMPORTANT AREA OF CONSTITUTIONAL ADJUDICATION AND BECAUSE THE COURT HAS TWICE EXPRESSLY DEFERRED RESOLVING THE ISSUE	
CONCLUSION	25
APPENDIX A	A3
APPENDIX B	A7

TABLE OF AUTHORITIES

CASES — PAGE

Albright v. Oliver,
__U.S.__, 114 S.Ct. 807 (1994) . . 18,21,22

Belcher v. City of Foley,
30 F.3d 1390, 1396 (11th Cir. 1994). . 19

Boswell v. Sherburne County,
849 F.2d 1117, 1121 (8th Cir. 1988). . 20

City of Canton v. Harris,
489 U.S. 378 (1989) 17,18

City of Revere v. Massachusetts General Hospital,
463 U.S. 239 (1983) 16,18

Ervin v. Busby,
992 F.2d 147, 150 (8th Cir.),
cert. denied, __ U.S. __,
114 S.Ct. 220, 126 L.Ed.2d 176 (1993). . 20

Hamm v. Dekalb County,
774 F.2d 1567, 1574 (11th Cir. 1985) . . 19

Hare v. City of Corinth,
36 F.3d 412, 415 (5th Cir. 1994),
reh. en banc granted,
316 F.3d 417 (5th Cir. 1994) 21

Heflin v. Stewart County,
958 F.2d 709, 714 (6th Cir.)
cert. denied, __ U.S. __,
113 S.Ct. 598 (1992) 19

TABLE OF AUTHORITIES (Continued)

CASES	PAGE
Jones v. Diamond, 636 F.2d 1364 (5th Cir.)(en banc), cert. dismissed, 4543 U.S. 950 (1981). .	20
Kost v. Kozakiewicz, 1 F.3d 176, 188 (3rd Cir. 1993)	19
Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1990) . .	21
Salazar v. City of Chicago, 940 F.2d 233, 240 (7th Cir. 1991) . . .	20
STATUTES	
28 U.S.C. Section 1254(1)	8
28 U.S.C. Section 1331	15
28 U.S.C. Section 1343	15
28 U.S.C. Section 2101(c)	8
42 U.S.C. Section 1983	9
RULES OF THE SUPREME COURT OF THE UNITED STATES	
Sup.Ct.R. 12, 13	9

No. 95-_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BONNIE C. SABIA,

Petitioner,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

The petitioner, Bonnie C. Sabia, respectfully prays that a Writ of Certiorari issue to review the opinion and judgement of the United States Court of Appeals for the Eleventh Circuit entered in this action on July 14, 1995.

OPINIONS AND ORDERS BELOW

The unreported opinion of the United States Court of Appeals for the Eleventh Circuit in BONNIE C. SABIA et al. v. SEMINOLE COUNTY, FLORIDA, et al., Case No. 94-2850, is reproduced in Appendix A, infra, and the unreported opinion of the United States District Court, Middle District of Florida, Orlando Division is reproduced in Appendix B, infra.

JURISDICTION

The jurisdiction of this Court to review the judgement of the United States Court of Appeals for the Eleventh Circuit by writ of certiorari is invoked under 28 U.S.C. Section 1254(1). On July 14, 1995 the Court of Appeals affirmed the judgement of the district court. This petition is thus timely filed within ninety days of that date as required by 28 U.S.C. Section

2101(c); Sup.Ct.R. 12, 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amendment VIII.

Finally, according to 42 U.S.C. Section 1983,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or

other proper proceedings for redress ...

STATEMENT OF THE CASE

A. Course of Proceedings in the Court Below.

This action commenced with the filing of the Complaint and Demand for Jury Trial on November 7, 1990. The corrected Amended Complaint and Demand for Jury Trial was filed on September 24, 1991. Defendant, Seminole County, filed its Answer and affirmative Defenses on October 1, 1991.

Defendant, Seminole County, filed a Motion for Summary Judgement with Memorandum in Support on March 31, 1992. The Motion for Summary Judgement was denied by an order dated July 29, 1992. On August 3, 1992, Co-Defendants, Blount, Polk, Lemen, Fauls and McGill, filed a Notice of Appeal relative to the July 29, 1992 Order which, in part, denied their Motion for Summary Judgement

based on the defense of qualified immunity. Defendant, Seminole County, filed its Notice of Appeal based upon the doctrine of pendant jurisdiction.

The 11th Circuit Court declined to exercise pendant jurisdiction as to Defendant, Seminole County, but reversed the trial court in an unpublished opinion dated December 20, 1993, and the case was remanded to the trial court. Defendant, Seminole County, filed a Renewed Motion for Summary Judgement on April 19, 1994. The Motion for Summary Judgement was set for hearing by Order dated May 16, 1994, and the hearing was held on June 1, 1994.

By Order dated June 7, 1994, the trial court, by Senior Judge George C. Young, granted the motions of all remaining Defendants for Summary Judgement and entered Judgement in favor of all Defendants on the

merits, substituting the findings of fact of the Appellate Court for the disputed facts of record to form a basis for affirming a defense Motion for Summary Judgement. Plaintiffs filed their Notice of Appeal on July 7, 1994. The Eleventh Circuit issued its per curium affirmance of the lower Court's ruling on July 14, 1995.

B. STATEMENT OF THE FACTS

On or about July 14, 1987, Edwin P. Bateman ("Bateman"), the deceased, was placed in the Seminole County Jail after his arrest on charges of armed robbery and murder. Bateman was a juvenile and, according to State law, he was subject to fifteen minute visual observations pursuant to chapter 33-8 of the Florida Administrative code.

Following his arrest, Bateman subsequently came into contact with Kaufman and

Bass-Paul, two mental health professionals. A contract betewen the Seminole Community Mental Health Center ("the Center" and the Seminole County Jail ("the jail") provided that either Kaufman or Bass-Paul would provide ten to twelve hours ewekly of mental health care to inmates at the jail.

Bateman met separately with both Kaufman and Bass-Paul on several occasions. During these sessions, he expressed depression about his incarceration. Bateman was placed on suicide watch by a guard on July 30, 1987, but Kaufman returned him to the general pop- ulation shortly thereafter. A few weeks later, at approximately 2:00 a.m. on August 27, 1987, Bateman committed suicide by hanging.

A genuine issue of material fact exists on the central issue of whether the "Sheriff's Officer defendants" were

deliberately indifferent to Mr. Bateman's serious psychological needs.

On the critical element of notice, deposition testimony and expert opinion reflect that these defendants were on notice of the threat of suicide on the night of Mr. Bateman's death. Moreover, the record reflects a genuine dispute over the matter of fifteen minute checks, according to the district court the most important single factual issue in the case. Further, the record reflects, again in deposition testimony, that the Sheriff's Office defendants failed to enter the cell block area to make the requisite fifteen minute checks, remaining instead in the central control room. These defendants were terminated (but later reinstated) for their failure to make the required checks from the cell block area itself.

In summary, the Sheriff's Office defendants were admittedly on notice of the threat of suicide, and a factual dispute remained on the issue of noncompliance with the mandatory rule requiring direct fifteen minute checks precluding a summary judgement in this case.

C. HOW THE FEDERAL QUESTION WAS PRESENTED

The jurisdiction of the District Court was invoked under 28 U.S.C. Section 1331 and 1343.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted under Sup.Ct.R. 10.1(a) because a division exists amoung the United States Courts of Appeals on the issue of whether constitutional claims of jail suicide by pre- trial detainees are governed not by an Eighth Amendment deliberate indifference standard but by a more protective standard originating in either the Fourth

Amendment or in the Due Process Clause of the Fourteenth Amendment.

Moreover, on two separate occasions this Court has explicitly deferred to another day the question of the appropriate standard. Thus, certiorari is also warranted under Sup.Ct.R. 10.1(c). In City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983), the Court expressly refused to decide whether the pretrial detainees are afforded greater protection under the Fourteenth Amendment that convicted prisoners are extended by the Eighth Amendment. Id at 243 (acknowledging only that the rights of a pretrial detainee to medical care, treatment, or monitoring are "at least as great" as the rights afforded to a convicted prisoner by the Eighth Amendment). This Court once again expressly reserved decision on this issue in City of

Canton v. Harris, 489 U.S. 378 (1989), observing that,

> [T]his Court has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case - a denial of the due process right to medical care while in detention - is established. Indeed in[Revere], we reserved deicsion on the question whether something less than the Eighth Amendment's deliberate indifference test may be applicable in claims by detainees asserting violation of their due process right to medical care while in custody.

Id. at 388, n. 8.

THE COURT SHOULD GRANT CERTIORARI BECAUSE THE CIRCUITS ARE DIVIDED ON THE CONSTITUTIONAL STANDARD APPLICABLE TO AN IMPORTANT AREA OF CONSTITUTIONAL ADJUDICATION AND BECAUSE THE COURT HAS TWICE EXPRESSLY DEFERRED RESOLVING THE ISSUE.

Certiorari is warranted in this case by virtue of a division amoung the United States Courts of Appeals on the issue of apporpriate constitutional standard applicable to claims by pretrial detainees

of inadequate medical care and the appropriate treatment and monitoring. On two separate occasions, moreover, the Court has explicitly deferred resolving the issue raised by petitioner. This matter provides an ideal opportunity, then, to resolve the question left open by the Court in both City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983), and again in City of Canton v. Harris, 489 U.S. 378 (1989).

In addition, certiorari is warranted on the grounds that the Court, in Albright v. oliver, __ U.S. __, 114 S.Ct. 807 (1994), recently modified, albeit in a different context, the constitutional standard defining governmental obligations toward accused citizens in the post-arrest, yet pre-conviction, stage of their criminal proceedings.

The Eleventh Circuit Court of Appeals has held that the same deliberate indifference standard applicable to assessing claims by convicted prisoners applies as well to Fourteenth Amendments claims of inadequate medical care made by pretrial detainees. See Hamm v. Dekalb County, 774 F.2d 1567, 1574 (11th Cir. 1985); Belcher v. City of Foley, 30 F3d. 1390, 1396 (11th Cir. 1994). Petitioner submits that the issue of adequacy of medical care extends with the same import to the issue of official deliberate indifference resulting in a jail suicide occuring while criminal charges are pending.

Most of the remaining circuits addressing the issue agree with the Eleventh Circuit. The Third Circuit, Kost v. Kozakiewicz, 1 F.3d 176, 188 (3rd Cir. (1993), the Sixth Circuit, Heflin v. Stewart

County, 958 F.2d 709, 714 (6th Cir.), cert. denied. __ U.S. __, 113 S.Ct. 598 (1992), and the Seventh Circuit, Salazar v. City of Chicago, 940 F.2d 233, 240 (7th Cir. 1991), all conflate the Eighth and Fourteenth Amendment standards, as does the Eighth Circuit. See Ervin v. Busby, 992 F.2d 147, 150 (8th Cir.), cert. denied, __ U.S. __, 114 S.Ct. 220, 126 L.Ed.2d 176 (1993); but see Boswell v. Sherburne County, 849 F.2d 1117, 1121 (8th Cir. 1988) (recognizing split among circuits in the issue).

In contrast, the Fifth Circuit Court of Appeals has consistently adopted a more protective constitutional standard for pretrial detainees, as opposed to convicted prisoners. In Jones v. Diamond, 636 F.2d 1364 (5th Cir.) (en banc), cert. dismissed, 453 U.S. 950 (1981), for instance, the court held that, "[P]retrial detainees are en-

titled to reasonable medical care unless the failure to supply it is reasonably related to a legitimate government objections" Id. at 1378. See all Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1990) (same; quoting Jones standard). The Fifth Circuit most recently adopted this standard in Hare v. City of Corinth, 36 F.3d 412, 415 (5th Cir. 1994), reh. en banc granted, 36 F.3d 417 (5th Cir. 1994). (The en banc Hare court has yet to issue an opinion).

Moreover, this Court has in analogous circumstances extended its Fourth Amendment analysis to evaluate the constitutional claims of an accused citizen at a stage beyond the initial seizure. In Albright v. Oliver, __ U.S. __, 114 S.Ct. 807 (1994), a plurality of the Court rejected an arrestee's argument that substantive due process governs the claim that he was prosecuted

(not arrested) without probable cause. 114 S.Ct. at 810. Once aware of his outstanding arrest warrant, which was issued upon the filing of a criminal information, the arrestee in Albright voluntarily surrendered but was released after posting bond. Id. Although the State Court found probable cause at a preliminary hearing, the criminal charges were later dismissed before trial on the basis that the charges failed to state an offense under state law. Id. The arrestee then brought suit, claiming that his continuing prosecution without probable cause violated substantive due process. Id.

The Albright plurality held simply that the Fourth Amendment, not Fourteenth Amendment substantive due process, governed the claim. Id. at 811. "The Framers", according to the plurality, "considered the matter of pretrial deprivation of liberty,

and drafted the Fourth Amendment to address it." Id.

Two concurring opinions, one by a member of the plurality, are also pertinent. Justice Ginsburg's opinion, for instance, invoked the common law rule that an arrestee's seizure in considered to continue even after pretrial release from custody. Id. at 815 (Ginsburg, J., concurring). Whether released on bond or detained awaiting trial, an arrestee is equally bound to answer the State's charges at trial and is therefore "seized" in either case. Id. at 817. Concurring separately, Justice Souter reasoned that,

> The importance of recognizing that latter limitations [on the reach of substantive due process] is underscored by pragmatic concerns about subjecting government actions to two (potentially inconsistent) standards for the same conduct and needlessly imposing on trial courts the unenviable burden of reconciling well-established

> jurisprudence under the Fourth and Eighth Amendments with the ill-defined contours of some novel due process right.

Id. at 820 (Souter, J., concurring in the judgement).

In summary, five members of the Albright court endorse the conclusion that the Fourth Amendment provides the governing constitutional standard for assessing the pretrial claims of accused citizens. Albright, of course, assessed the probable cause, as opposed to reasonableness of seizure, component of the Fourth Amendnent. Yet, in so doing, the Court unequivocally rejected the contention that either the Eighth or Fourteenth Amendments govern a constitutional analysis of the post-arrest,

yet pre-conviction, stage of criminal proceedings.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari prayed for within should be granted.

Respectfully submitted,

RODNEY G. GREGORY, ESQUIRE
Law Office of Rodney G. Gregory, P.A.
3900 Atlantic Blvd.
Jacksonville, Florida 32207
(904) 398-0012

October 11, 1995

No. 95-_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents,

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Rodney G. Gregory, Esq.
Counsel of Record
Matthew P. Farmer, Esq.
Law Office of Rodney
G. Gregory, P.A.
3900 Atlantic Blvd.
Jacksonville, FL 32207
(904) 398-0012

TABLE OF CONTENTS

Page

APPENDIX A

U.S. Court of Appeals, Eleventh Circuit filed July 14, 1995 . . . . . .

APPENDIX B

U. S. District Court, Middle District of Florida, Orlando Division, Order Granting Summary Judgment . .

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-2850
Non-Argument Calander

D.C. Docket No. 90-831-CIV-ORL-06

BONNIE C. SABIA, individually and as administratrix of the Estate of Edwin P. Bateman, and MARGARET CARROW, individually and as natural mother of Edwin P. Bateman,

Plaintiffs-Appellants,

versus

SEMINOLE COUNTY, MATTHEW MCGILL, in his official capacity as guard at the Seminole County Jail, DOUGLAS FAULS, in his official capacity as guard at the Seminole County Jail, JAY LEMEN, individually and in his official capacity as Jail Administrator, RICHARD BLOUNT, in his official capacity as guard at the Seminole County Jail, DONALD ESLINGER, individually and in his official capacity as successor to John E. Polk, Sheriff and Supervisor of the guards,

Defendants-Appellees,

IRMA BASS-PAUL, individually and in her capacity as psychologist for the Psychological Services, Seminole County Jail, et al.,

Defendants.

Appeal from the United States District Court for the Middle District of Florida

(July 14, 1995)

Before TJOFLAT, Chief Judge, KRAVITCH, Circuit Judge, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

In August 1987, Edwin Bateman, a juvenile, committed suicide in the Seminole County Jail while awaiting trial for armed robbery and murder. Bonnie C. Sabia, individually and as administratrix of the estate of Edwin Bateman, and Margaret Carrow, individually and as natural mother of Edwin Bateman, (collectively, "Appellants") brought this action under 42 U.S.C.A. Section 1983 against various defendants. As a result of prior rulings, the only remaining defendants in this case are Matthew McGill, Richard Blount, Douglas Fauls, and

Donald Eslinger, in their official capacities, and Seminole County (collectively, "Appellees"). This appeal is from the district court's grant of summary judgement for Appellees in June 1994.

Appellants contend that summary judgement was inappropriate because (1) Appellees failed to sustain their burden of production in moving for summary judgement, (2) there is a genuine issue of fact as to whether the actions of the individual defendants constituted deliberate indifference in violation of Bateman's Fifth Amendment rights as a pretrial detainee, (3) the alleged constitutional violation stemmed from the policies of Seminole County, and (4) the grant of summary judgement violated the law of the case as established by the district

court's prior denial of summary judgement for Appellees. After reviewing the record, we conclude that Appellants' contentions are without merit.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE SABIA, individually and as administratrix of the estate of Edwin P. Bateman, and MARGARET CARROW, individually and as natural mother of Edwin P. Bateman,

Plaintiffs,

vs. CASE NO. 90-831-CIV-ORL-06

SEMINOLE COUNTY, MATTHEW MCGILL, in his official capacity as guard at the Seminole County Jail, JAY LEMEN, in his official capacity as Jail Administrator, DOUGLAS FAULS, in his official capacity as guard at the Seminole County Jail, RICHARD BLOUNT, in his capacity as guard at the Seminole County Jail, DON ESLINGER, in his official capacity as successor to John E. Polk, Sheriff and Supervisor of the guards, and SEMINOLE COMMUNITY MENTAL HEALTH CENTER, INC., a Florida corporation, not-for-profit,

Defendants.
_____/

ORDER GRANTING SUMMARY JUDGEMENT

This case is before the Court upon the following motions for Summary Judgement by Defendants: Eslinger, McGill, Blount, Fauls and Lemen (Doc. No. 152,

filed April 7, 1994), and Seminole County (Doc. No. 157, filed April 19, 1994).1 Defendant Eslinger (as successor of Sheriff Polk) is the Sheriff of Seminole County. Defendant Lemen is the Administrator of the Seminole County Jail. Defendant McGill, Blount, and Fauls were guards at the Seminole County Jail at the time the incident at issue herein occurred.

A synopsis of the facts of this case is contained in the Order of the Eleventh Circuit Court of Appeals, No. 92-2774, filed December 20, 1993 (see Doc. No. 50, Exh. E). At approximately 2:00 a.m. on August 27, 1987, Edwin P. Bateman

---

1 The Motion for Summary Judgement by Defendant Seminole Community Mental Health Center, Inc., (Doc. No. 163, filed April 22, 1994), is moot by virtue of this Court's Order granting Plaintiff's Motion to Voluntarily Dismiss this Defendant.

committed suicide by hanging.2 At the time of his death, the decedent was incarcerated in the Seminole County Jail, following his July 14, 1987, arrest for armed robbery and murder. Bateman was a 17-year-old juvenile and, as such, was visually observed every fifteen minutes.

Pursuant to a contract between the jail and the Seminole Community Mental Health Center, Inc., mental health professionals Gill Kaufman and Irma Bass-Paul were to provide a total of ten to twelve

---

2 During oral argumentit was asserted without contradiction that, technically, Bateman's suicide was accomplished by strangulation rather than hanging, in that the bar to which the makeshift noose was tied was approximately three feet from the ground. As such, Bateman was never suspended in the air; rather, he died while in a sitting position on the floor of his cell. This could clarify why the correctional officers, who conducted the requisite visual observations from the control room, were not aware that Bateman had committed suicide until he had been dead for approximately four to six hours.

hours of mental health care to inmates at the jail. Bateman met separately with Bass-Paul and Kaufman on several occasions during his incarceration. On July 30, 1987, a guard placed Bateman on suicide watch. Bateman was returned to the general population after meeting with Kaufman, who determined that Bateman was not suicidal. Bateman met with Bass-Paul several times during the month of August, 1987. Bateman expressed some remaining depression, but did not appear suicidal. During his last session with Bass-Paul on August 25, 1987, Bateman said he "felt good."

Plaintiff Sabia, as Administratrix of Bateman's estate, and Margaret Carrow, as the natural mother of Bateman, brought this action under 42 U.S.C. Section 1983 against three separate groups of

Defendants: employees of the Seminole County's Sheriff's Office; the Mental Health Center and its employees, Bass-Paul and Kaufman; and Seminole County.

All Defendants filed motions for summary judgement, which were denied by the district court judge to whom this case was originally assigned. Defendants Jay Lemen and Sheriff Eslinger appealed this Court's denial of their motions for summary judgement on grounds of qualified immunity. All other Appellants asked the Court of Appeals to hear their appeals under the doctrine of pendent jurisdiction.

The Eleventh Circuit Court of Appeals partially reversed this Court's denial of summary judgement, finding that Lemen, the Seminole County Jail Administrator, was entitled to summary judgement in his

individual capacity on the basis of qualified immunity.3 "In the interest of judicial economy," the Court of Appeals extended pendent jurisdiction to Bass-Paul and Kaufman, holding that they were entitled to summary judgement on the merits because the record contained no evidence that the two defendants' treatment of Bateman was deliberately indifferent. The Court of Appeals declined to consider any other pendent issues.

On remand, this Court entered an Order consistent with the decision of the

---

3 The Court of Appeals found: Lemen had no knowledge of any threat or attempt at suicide by Bateman. In addition, Bateman was checked every fifteen minutes as per regulations, and met regularly with a mental health professional. Given that as far as Lemen was aware, Bateman had neither threatened nor attempted suicide prior to taking his own life, the failure of Lemen to prevent his suicide cannot, as a matter of law, constitute deliberate indifference.

Court of Appeals. Subsequent to the entry of the Order, the Court granted Plaintiff's Motion for Voluntary Dismissal of Defendant Eslinger in his individual capacity (Doc. Nos. 143 and 146).

On the eve of the hearing on the Motions for Summary Judgement, Plaintiffs filed a Motion for Voluntary Dismissal, With Prejudice, of Defendant Seminole Community Mental Health Center (Doc. No. 176). This Court has granted that motion by separate order.

Oral argument on the renewed motions for summary judgement of the remaining Defendants was heard by the Court on June 1, 1994.

Motion for Summary Judgement by Defendants Eslinger, Lemen, McGill, Blount and Fauls

These Defendants move for summary judgement on the basis that there is no

evidence sufficient to raise a factual question as to whether any of the Defendants was guilty of deliberate indifference to a known serious danger or was deliberately indifferent in failing to prevent the Decedent's suicide.

In the recent en banc decision in Tittle v. Jefferson County, 10 F.3d 1535 (11th Cir. 1994), the personal representative of two inmates who hung themselves while incarcerated at the Jefferson County Jail brought an action against Jefferson County in which they alleged that the County violated the decedent's constitutional rights by failing to correct its defectively designed jail cells and to provide for sufficient screening of inmates for suicidal tendencies. In holding for the Defendant, the Court of Appeals noted that

> [i]n a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under either the eight or fourteenth amendment, the plaintiff must show that the jail official (defendant) displayed "deliberate indifference" to the prisoner's taking his his own life.

Id. at 1539 (quoting Edwards v. Gilbert, 867 F.2d 1271, 1274-75 (11th Cir. 1989 (citations omitted)). The Court explained that, in the context of a jail suicide case, the precise issue is "whether a defendant was deliberately indifferent to an individual's mental condition and the likely consequence of the condition". Id.

The plaintiff in a jail suicide case must meet a stringent standard to successfully establish "deliberate indifference." "[A] finding of deliberate indifference requires that officials have notice of the suicidal tendency of the individual whose rights are at issue in

order to be held liable for the suicide of that individual." Id. (emphasis in original) (citing Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990)). The burden is on the plaintiff to demonstrate a "'strong likelihood, rather than a mere possibility,' that suicide would result froma defendant's actions or inactions." Id. (emphasis added) (quoting Edwards, 867 F.2d at 1276). The fact that an inmate had an opportunity to commit suicide is insufficient, in and of itself, to impose liability on those charged with the care or prisoners. Id. (citing Popham).

Plaintiffs argue that they have established a genuine issue of material fact as to whether one or more of the Defendant correctional officers were put on notice that Bateman was suicidal before

he died.

The evidence is uncontroverted that mental health professionals were assigned to assess Bateman regularly and that these professionals did not consider Bateman to be a suicide risk. Nevertheless, assuming without deciding that these Defendants did have notice of Bateman's suicidal tendencies, the Court of Appeals found on page 7 of its decision that the record shows the decedent "was checked every fifteen minutes as per regulations" governing the incarceration of juveniles.4 On this record, the Court concludes that Plaintiff has failed to demonstrate the existence of

---

4 The requirements governing those charged with custody of a juvenile were identical to those required in the case of a suicidal inmate -- i.e., visual observation at 15-minute intervals. Therefore, whether or not any of the Defendant correctional officers was on notice of Bateman's suicidal tendendcies, the officers were taking the same precautions.

a genuine issue of material fact as to whether Sheriff Eslinger, Jail Administrator Lemen or the Defendant correctional officers -- assuming without deciding that these Defendants were on notice of decedent's mental condition -- showed deliberate indifference to the consequences of the decendent's mental condition. Accordingly, summary judgement will be entered in favor of Defendants Eslinger, Lemen, McGill, Blount and Fauls.

Motion for Summary Judgement by Seminole County

Defendant Seminole County moves for summary judgement on the grounds that the record evidence demonstrates that Seminole County "was not the moving force behind any alleged deprivation of the Plaintiff's constitutional rights," see Monell v. New York City Dept. of Social Services, 436

U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed. 2d 611 (1978).

Plaintiffs argue that the affidavit of their expert witness, Patrick R. Anderson (Doc. No. 178, filed May 31, 1994), establishes a genuine issue of material fact as to the constitutional sufficiency of the County's custom and policy of checking on inmates considered to be at risk of suicide.

"Counties may be liable for violations of constitutional rights only when such violations occur as a result of an official county policy." Tittle,k 10 F.3d at 1540 (citing Monell v. Dep't of Social Services, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed 2d 611 (1978); Parker v. Williams, 862 F.2d 1471, 1477 (11th Cir. 1989).

Plaintiffs have not pointed to any evidence which shows the existence of a genuine issue of material fact as to whether the County acted with deliberate indifference with respect to the rights of the decedent. To the contrary, as noted above, the Court of Appeals found that "Bateman was checked every fifteen minutes as per regulations ...." On this record, summary judgement in favor of Seminole County is appropriate.

Conclusion

For the reasons expressed, the Court hereby **GRANTS** remaining Defendants' Motion for Summary Judgement (Doc. Nos. 152 and 157). The Clerk is hereby directed to enter summary judgement in favor of all remaining Defendants and against Plaintiffs.

DONE AND ORDERED in Chambers at Orlando, Florida this 7th day of June, 1994.

/S/
GEORGE C. YOUNG
SENIOR UNITED STATES
DISTRICT JUDGE

copies to:
Counsel of Record

Supreme Court, U.S.
FILED
NOV 15 1995
OFFICE OF THE CLERK

(2)

No. 95-628

In The

Supreme Court of the United States

October Term, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

KEVIN J. CARDEN
Counsel of Record
HANNAH, MARSEE & VOGHT, P.A.
Attorneys for Respondent, Seminole County
Post Office Box 536487
Orlando, FL 32853-6487
407/849-1122

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

17 pp

RESTATEMENT OF QUESTIONS PRESENTED

1. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants constituted deliberate indifference in violation of the detainee's Fourteenth Amendment rights as a pretrial detainee, does the Eighth Amendment deliberate indifference standard apply, or a more protective standard based either on the Due Process Clause or the Fourth Amendment?

2. Given that the Eighth Amendment protects convicted prisoners from only that degree of punishment that can be characterized as cruel and unusual, should the Eighth Amendment deliberate indifference standard apply without modification to jail suicide cases, involving accused juvenile citizens detained pending trial who are entitled to a presumption of innocence and who, unlike convicted prisoners, may not be punished?

3. In regard to the estate of a pretrial detainee in a jail suicide case occurring in a county jail, is a claim of municipal liability limited to the sheriff administering the jail, or is the county properly named as well?

4. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants and county jail constituted deliberate indifference in violation of the detainees' Fourteenth Amendment rights as a pretrial detainee, can Appellate Courts substitute their findings of fact for disputed facts of record to form a basis for affirming the granting of a Motion for Summary Judgment?

LIST OF PARTIES

Counsel for Respondent certifies to the Court that the following persons are parties to or have an interest in the outcome of this case.

Richard Blount – Respondent

Kevin J. Carden, Esquire
Counsel for Respondent, Seminole County

Margaret Carrow – Petitioner

Donald F. Eslinger, Sheriff – Respondent

Matthew P. Farmer, Esquire
Counsel for Petitioners

Douglas Fauls – Respondent

Rodney G. Gregory, Esquire
Counsel for Petitioners

Matthew McGill – Respondent

Julius F. Parker, Jr., Esquire
Counsel for Respondents, Matthew McGill, Douglas Fauls, Richard Blount, and Donald F. Eslinger

Bonnie Sabia – Petitioner

Seminole County – Respondent

TABLE OF CONTENTS

Page

Restatement of Questions Presented i

List of Parties ii

Table of Contents iii

Table of Citations iv

Statutory Provisions 1

Statement of the Case 4

Reasons to Deny the Writ 6

THIS COURT SHOULD NOT REVIEW AN UNPUBLISHED PER CURIAM AFFIRMANCE OF THE UNITED STATES COURT OF APPEALS BASED ON PROCEDURAL GROUNDS 6

THE WRIT SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PRESSED OR PASSED ON BELOW 8

THE WRIT SHOULD BE DENIED BECAUSE NO CONFLICT EXISTS AS TO THE STANDARD FOR MUNICIPAL LIABILITY 10

Conclusion 12

TABLE OF CITATIONS

Page

CASES

Appalachian Power Company v. American Institute of Certified Public Accountants, 361 U.S. 121, 80 S.Ct. 16, 4 L.Ed.2d 30 (1959) 7

Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989) 11

City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983) 11

Duignan v. United States, 274 U.S. 195 (1927) 10

Monell v. New York City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) 10, 11

United States v. Johnston, 268 U.S. 220, 45 S.Ct. 496, 69 L.Ed. 925 (1925) 8

United States v. Williams, 504 U.S. ___, 112 S.Ct. ___, 118 L.Ed.2d 352 (1992) 10

STATUTES

28 U.S.C.A. §1254 3

42 U.S.C. § 1983 ..... 9, 10, 11

CONSTITUTION

Amendment IV of U.S. Constitution 1, 9

Amendment VIII of U.S. Constitution 1, 9

Amendment XIV of U.S. Constitution 1, 9

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, Seminole County, respectfully requests this Court deny the Petition for Writ of Certiorari which seeks review of the Eleventh Circuit's Opinion below. That Opinion is unreported, but is reprinted in the Petition for Certiorari at Appendix A.

STATUTORY PROVISIONS

U.S. Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, Amendment XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C.A. §1254, Courts of Appeal; Certiorari; Certified Questions.

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

1. By Writ of Certiorari granted upon the Petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

2. By certification at any time by a Court of Appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification, the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

This action was commenced in the U.S. District Court for the Middle District Court for the Middle District of Florida by Petitioners, Bonnie C. Sabia and Margaret Carrow, against the Respondents, Seminole County, Matthew McGil, Douglas Fauls, Donald Eslinger and Richard Blount.[1]

The original Complaint and Demand for Jury Trial was filed on November 7, 1990. The corrected Amended Complaint and Demand for Jury Trial was filed on September 24, 1991. Respondent, Seminole County, filed its Answer and Affirmative Defenses on October 1, 1991. Respondents McGill, Blount, Fauls, and Eslinger filed their Answer and Affirmative Defenses on October 15, 1991.

Respondent, Seminole County, filed a Motion for Summary Judgment with Memorandum in Support on March 31, 1992. Respondents, McGill, Blount, Fauls and Eslinger filed a Motion for Summary Judgment and Memorandum in Support on May 13, 1992. The Motions for Summary Judgment were denied by Order dated July 29, 1992. On August 3, 1992, Respondents McGill, Blount, Fauls and Eslinger filed a Notice of Appeal based on the defense of qualified immunity. Respondent, Seminole County, filed its Notice of Appeal based upon the doctrine of pendant jurisdiction.

---

[1] Also named were Jay Lemen, Erma Bass-Paul, Gilbert Kaufman and Seminole County Mental Health Center, Inc. These Defendants have been previously dismissed.

The Eleventh Circuit reversed the Trial Court in an unpublished Opinion dated December 20, 1993, but declined to exercise pendant jurisdiction as to Respondent, Seminole County.

Upon remand, Respondents, McGill, Blount, Fauls and Eslinger filed a Renewed Motion for Summary Judgment on April 6, 1994. Respondent, Seminole County filed a Renewed Motion for Summary Judgment on April 19, 1994. The Motions for Summary Judgment were set for Hearing by Order dated May 16, 1994, and the Hearing was held on June 1, 1994.

By Order dated June 7, 1994, the Trial Court, by Senior Judge George C. Young, granted the Motions for Summary Judgment, and entered Judgment in favor of all Respondents on the merits. Petitioners filed their Notice of Appeal on July 7, 1994.

The Eleventh Circuit issued its per curiam affirmance of the lower court's ruling on July 14, 1995. The Eleventh Circuit per curiam Opinion is unpublished, but included at Appendix B in the Petition for Writ of Certiorari. Petitioners Sabia and Carrow now seek review in the Supreme Court of the United States.

REASONS TO DENY THE WRIT

THIS COURT SHOULD NOT REVIEW AN UNPUBLISHED PER CURIAM AFFIRMANCE OF THE UNITED STATES COURT OF APPEALS BASED ON PROCEDURAL GROUNDS.

The decision sought to be reviewed in this action is a two-paragraph per curiam affirmance of a Summary Judgment entered in favor of all Respondents, including Seminole County. The Opinion of the Eleventh Circuit, in its entirety, is as follows:

Appeal from the United States District Court for the Middle District of Florida

---

(July 14, 1995)

Before TJOFLAT, Chief Judge, KRAVITCH, Circuit Judge, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

> In August 1987, Edwin Bateman, a juvenile, committed suicide in the Seminole County Jail while awaiting trial for armed robbery and murder. Bonnie C. Sabia, individually and as administratrix of the estate of Edwin Bateman, and Margaret Carrow, individually and as natural mother of Edwin Bateman, (collectively, "Appellants") brought this action under 42 U.S.C.A. Section 1983 against various defendants. As a result of prior rulings, the only remaining defendants in this case are Matthew McGill, Richard Blount, Douglas Fauls, and Donald Eslinger, in their official capacities, and Seminole County (collectively, "Appellees"). This

> appeal is from the district court's grant of summary judgment for Appellees in June, 1994.
>
> Appellants contend that summary judgment was inappropriate because (1) Appellees failed to sustain their burden of production in moving for summary judgment, (2) there is a genuine issue of fact as to whether the actions of the individual defendants constituted deliberate indifference in violation of Bateman's Fifth Amendment rights as a pretrial detainee, (3) the alleged constitutional violation stemmed from the policies of Seminole County, and (4) the grant of summary judgment violated the law of the case as established by the district court's prior denial of summary judgment for Appellees. After reviewing the record, we conclude that Appellant's contentions are without merit.
>
> AFFIRMED.

The Supreme Court should not review a decision of the Court of Appeals when such decision necessarily involves the lower court's discretion as to a particular set of facts. In *Appalachia Power Company v. American Institute of Certified Public Accountants*, 361 U.S. 121, 80 S.Ct. 16, 4 L.Ed.2d 30 (1959), this Court addressed Petitioner's contention that the District Court, in treating Respondent's Motion to Dismiss as a Motion for Summary Judgment, erred in not following the requirement of Rule 12(b) that "all parties shall be given reasonable opportunity to present all material made pertinent to such Motion [for Summary Judgment] by Rule 56." In response, the Supreme Court held:

> [o]rdinarily an application by a District Court of the Rules of Civil Procedure when affirmed by the Court of Appeals will not be reviewed by

> this Court. This is particularly true where, as here, the question is one that concerns the judgment of the District Judge in relation to a particular set of facts.

Id. at 18. *See also, United States v. Johnston,* 268 U.S. 220, 45 S.Ct. 496, 69 L.Ed. 925 (1925). In the instant case, the District Court's application of Rule 56 and the Eleventh Circuit affirmance should not be disturbed.

THE WRIT SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PRESSED OR PASSED ON BELOW.

Only two of the four questions presented for review are actually addressed in the Petition for Writ of Certiorari. These questions are as follows:

1. IN EVALUATING CLAIMS BY JUVENILE PRETRIAL DETAINEES THAT THE ACTIONS OF THE INDIVIDUAL DEFENDANTS CONSTITUTED DELIBERATE INDIFFERENCE IN VIOLATION OF THE DETAINEE'S FOURTEENTH AMENDMENT RIGHTS AS A PRETRIAL DETAINEE, DOES THE EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY, OR A MORE PROTECTIVE STANDARD BASED EITHER ON THE DUE PROCESS CLAUSE OR THE FOURTH AMENDMENT?

2. GIVEN THAT THE EIGHTH AMENDMENT PROTECTS CONVICTED PRISONERS FROM ONLY THAT DEGREE OF PUNISHMENT THAT CAN BE CHARACTERIZED AS CRUEL AND UNUSUAL, SHOULD THE EIGHTH AMENDMENT DELIBERATE

INDIFFERENCE STANDARD APPLY WITHOUT MODIFICATION TO JAIL SUICIDE CASES, INVOLVING ACCUSED JUVENILE CITIZENS DETAINED PENDING TRIAL WHO ARE ENTITLED TO A PRESUMPTION OF INNOCENCE AND WHO, UNLIKE CONVICTED PRISONERS, MAY NOT BE PUNISHED?

Petitioners' corrected Amended Complaint and Demand for Jury Trial contains three Counts based, almost exclusively, upon the Fourteenth Amendment and 42 U.S.C. §1983. Indeed, despite the language as contained in Count I, Petitioners abandoned or failed to press any theory based upon the Fourth Amendment to the United States Constitution. More importantly, at no time did Petitioners raise a theory based upon the Eighth Amendment or any standard arising therefrom. Instead, Petitioners have steadfastly pressed a "deliberate indifference" standard.

The initial Brief, filed by Petitioners in the Eleventh Circuit, contains the following: "Argument III: Appellants have demonstrated that their deliberate indifference claim should be presented to a jury." Petitioners then argue that "Plaintiffs have satisfied the burden of demonstrating that the existence of deliberate indifference in this case is that [sic] question for the jury." The Petition for Writ of Certiorari also identifies the central issue as follows:

> . . . [w]hether the "Sheriff's Officer defendants" were deliberately indifferent to Mr. Bateman's serious psychological needs. *Petition for Writ of Certiorari* at 13-14.

Similarly, a review of the Opinion of the Eleventh Circuit, quoted in its entirety herein, demonstrates that the Court did not "pass" on the issue of the appropriate standard in §1983 cases involving jail suicides of pretrial detainees. This Court's traditional rule precludes the grant of Certiorari when the question presented was not "pressed or passed upon below." *Duignan v. United States*, 274 U.S. 195, 200 (1927); *United States v. Williams*, 504 U.S. ___, 112 S.Ct. ___, 118 L.Ed.2d 352, 361 (1992). The instant case should be treated in the same manner.

THE WRIT SHOULD BE DENIED BECAUSE NO CONFLICT EXISTS AS TO THE STANDARD FOR MUNICIPAL LIABILITY.

Each of Petitioners' underlying claims asserts inadequate policies, procedures and customs, and the failure to train. In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), this Court held as follows:

> [A] municipality can be found liable under §1983 only where the municipality *itself* causes the constitutional violation at issue. *Respondent superior* or vicarious liability will not attach under §1983.

Id. at 694-695.

Petitioners suggest one reason this Court should accept review is because it has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case – a denial of the due process right to medical care while in detention

– is established. *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

However, in citing *Canton v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989), Petitioners fail to state why this Court declined to address the issue of culpability or the question as to whether something less than the Eighth Amendment's "deliberate indifference" test was applicable. The two reasons, as set forth by this Court, are as follows:

> First, Petitioner has conceded that, as the case comes to us, we must assume that respondent's constitutional right to receive medical care was denied by City employees – whatever the nature of that right might be. [S]econd, the proper standard for determining when a municipality will be liable under §1983 for constitutional wrongs does not turn on any underlying culpability test that determines when such wrongs have occurred.

Id. at 1205, n.8.

As the District Court Senior Judge, George C. Young, correctly points out in his Order dated June 7, 1994 (reproduced in Petition for Writ of Certiorari at Appendix B), Seminole County can be liable under §1983 only where it is the "moving force" behind the alleged constitutional violation or only when such violations occur as a result of an official County policy. Citing *Monell, id.*, at 694. The proper standard was applied.

CONCLUSION

The United States Supreme Court should not be called on to review an unpublished per curiam affirmance based on the discretion of a District Judge in relation to a particular set of facts, and where no constitutional provision is implicated as to municipal liability.

Respectfully submitted,

KEVIN J. CARDEN
Counsel of Record
HANNAH, MARSEE & VOGHT, P.A.
Attorneys for Respondent,
Seminole County
Post Office Box 536487
Orlando, FL 32853-6487
407/849-1122

Supreme Court, U.S.
FILED
NOV 15 1995
CLERK

No. 95-628

In The

Supreme Court of the United States

October Term, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JULIUS F. PARKER, JR.
Counsel of Record
JENNIFER PARKER LAVIA
THE PARKER LAW FIRM
2804 Remington Green Circle
Post Office Box 14436
Tallahassee, FL 32317-4436
(904) 385-4454

Attorneys for Respondents, Eslinger, McGill, Blount and Fauls

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

IN EVALUATING CLAIMS BY JUVENILE PRETRIAL DETAINEES THAT THE ACTIONS OF THE INDIVIDUAL DEFENDANTS CONSTITUTED DELIBERATE INDIFFERENCE IN VIOLATION OF THE DETAINEE'S FOURTEENTH AMENDMENT RIGHTS AS A PRETRIAL DETAINEE, DOES THE EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY, OR A MORE PROTECTIVE STANDARD BASED EITHER ON THE DUE PROCESS CLAUSE OR THE FOURTH AMENDMENT?

GIVEN THAT THE EIGHTH AMENDMENT PROTECTS CONVICTED PRISONERS FROM ONLY THAT DEGREE OF PUNISHMENT THAT CAN BE CHARACTERIZED AS CRUEL AND UNUSUAL, SHOULD THE EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY WITHOUT MODIFICATION TO JAIL SUICIDE CASES, INVOLVING ACCUSED JUVENILE CITIZENS DETAINED PENDING TRIAL WHO ARE ENTITLED TO A PRESUMPTION OF INNOCENCE AND WHO, UNLIKE CONVICTED PRISONERS, MAY NOT BE PUNISHED?

IN REGARD TO THE ESTATE OF A PRETRIAL DETAINEE IN A JAIL SUICIDE CASE OCCURRING IN A COUNTY JAIL, IS A CLAIM OF MUNICIPAL LIABILITY LIMITED TO THE SHERIFF ADMINISTERING THE JAIL, OR IS THE COUNTY PROPERLY NAMED AS WELL?

QUESTIONS PRESENTED FOR REVIEW – Continued

IN EVALUATING CLAIMS BY JUVENILE PRETRIAL DETAINEES THAT THE ACTIONS OF THE INDIVIDUAL DEFENDANTS AND COUNTY JAIL CONSTITUTED DELIBERATE INDIFFERENCE IN VIOLATION OF THE DETAINEE'S FOURTEENTH AMENDMENT RIGHTS AS A PRETRIAL DETAINEE, CAN APPELLATE COURTS SUBSTITUTE THEIR FINDINGS OF FACT FOR DISPUTED FACTS OF RECORD TO FORM A BASIS FOR AFFIRMING THE GRANTING OF A MOTION FOR SUMMARY JUDGMENT?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS TO DENY THE WRIT 2

THE WRIT SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PRESSED OR PASSED UPON BELOW 2

A. THE QUESTION PRESENTED IN THE PETITION WAS NOT PRESSED BELOW 3

B. THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PASSED ON BY THE COURT BELOW 4

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

City of Canton v. Harris, 489 U.S. 378 (1989) 7

Duignan v. United States, 274 U.S. 195 (1927) 3

Illinois v. Gates, 462 U.S. 213 (1983) 6

United States v. Williams, 504 U.S. 36 (1992) 3

STATUTES, RULES AND REGULATIONS

42 U.S.C. § 1983 5

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, Donald Eslinger, Sheriff of Seminole County, Florida, Richard Blount, Douglas Fauls and Matthew McGill, respectfully request that this Court deny the Petition for Writ of Certiorari which seeks review of the Eleventh Circuit's opinion below. That unreported opinion is reprinted in the Petition in Appendix A.

STATEMENT OF THE CASE

Respondents accept Petitioners' statement of the case except as follows:

Petitioners assert that the district court "substitut[ed] the findings of fact of the Appellate Court for the disputed facts of record" in granting summary judgment in favor of defendants. Petition for Writ of Certiorari at 11-12. Petitioners' assertion is that disputed issues of fact existed regarding the issue of notice of Mr. Bateman's suicidal tendencies and the fifteen minute checks. However, for purposes of granting the defense motion for summary judgment, the district court assumed, without deciding, that Defendants had notice. Petition for Writ of Certiorari at A17-18. Therefore, the district court did not make any findings of fact on the issue of notice.

As to the issue of fifteen minute checks, Petitioners do not identify the source of any disputed facts. Petitioners simply assert that "the record reflects a genuine dispute over the matter of fifteen minute checks." Petition for Writ of Certiorari at 14. The district court stated that "the Court of Appeals found on page 7 of its decision

that the record shows the decedent 'was checked every fifteen minutes as per regulations' governing the incarceration of juveniles." Petition for Writ of Certiorari at A17. Petitioners have not pointed to any evidence to the contrary; therefore, this Court should reject the unsupported contention that any factual disputes exist.

REASONS TO DENY THE WRIT

THE WRIT SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PRESSED OR PASSED UPON BELOW

Petitioners present four questions for review. However, only two of these questions are actually addressed in Petitioners' argument. These two questions are related and will be addressed together herein:

> 1. IN EVALUATING CLAIMS BY JUVENILE PRETRIAL DETAINEES THAT THE ACTIONS OF THE INDIVIDUAL DEFENDANTS CONSTITUTED DELIBERATE INDIFFERENCE IN VIOLATION OF THE DETAINEE'S FOURTEENTH AMENDMENT RIGHTS AS A PRETRIAL DETAINEE, DOES THE EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY, OR A MORE PROTECTIVE STANDARD BASED EITHER ON THE DUE PROCESS CLAUSE OR THE FOURTH AMENDMENT?
>
> 2. GIVEN THAT THE EIGHTH AMENDMENT PROTECTS CONVICTED PRISONERS FROM ONLY THAT DEGREE OF PUNISHMENT THAT CAN BE CHARACTERIZED AS CRUEL AND UNUSUAL, SHOULD THE

EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY WITHOUT MODIFICATION TO JAIL SUICIDE CASES, INVOLVING ACCUSED JUVENILE CITIZENS DETAINED PENDING TRIAL WHO ARE ENTITLED TO A PRESUMPTION OF INNOCENCE AND WHO, UNLIKE CONVICTED PRISONERS, MAY NOT BE PUNISHED?

This Court should deny the Petition for Writ of Certiorari because the questions presented for review were not "pressed or passed upon below". *Duignan v. United States*, 274 U.S. 195, 200 (1927). This Court has emphasized that the rule is stated in the disjunctive, that is, that the Court may address a question that was *either* pressed *or* passed upon below. *United States v. Williams*, 504 U.S. 36, 41 (1992). Thus, Respondents will address each half of the test in turn.

A. THE QUESTION PRESENTED IN THE PETITION WAS NOT PRESSED BELOW

Most easily dispensed with is the issue of whether the question presented was "pressed" below. Clearly, Petitioners never even raised the issue of whether the applicable standard was deliberate indifference or some less stringent standard. In fact, it is quite apparent that Petitioners assumed, without argument, that the appropriate standard was deliberate indifference. Petitioners' brief to the Eleventh Circuit contains no argument that the standard should be anything other than deliberate indifference. Respondents have included the relevant portion of Petitioners' brief below in the Appendix

hereto. The Initial Brief of Appellants contained the following: "Argument III: Appellants Have Demonstrated that Their Deliberate Indifference Claim Should Be Presented to a Jury." Appendix 2. Petitioners argued as follows: "All three sets of defendants argue that the plaintiffs cannot survive summary judgment on their claim that the defendants were deliberately indifferent to Mr. Bateman's serious mental health needs. Authority from this court, however, indicates unequivocally that the facts of this case support a jury finding of deliberate indifference." Appendix 2. Petitioners then discuss the cases which hold that the standard is deliberate indifference and conclude, "Plaintiffs have satisfied the burden of demonstrating that the existence of deliberate indifference in this case is at [sic] question for the jury." Appendix 9. In fact, even in the Petition for Writ of Certiorari, Petitioners state that "A genuine issue of fact exists on the central issue of whether the 'Sheriff's Officer defendants' were deliberately indifferent to Mr. Bateman's serious psychological needs." Petition for Writ of Certiorari at 13-14.

Thus, it is clear that Petitioners did not "press" the issue below. Nevertheless, this Court could decide the questions presented if they were "passed on" by the court below.

B. THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PASSED ON BY THE COURT BELOW

The opinion of the Eleventh Circuit in its entirety was as follows:

> In August 1987, Edwin Bateman, a juvenile, committed suicide in the Seminole County Jail while awaiting trial for armed robbery and murder. Bonnie C. Sabia, individually and as administratrix of the estate of Edwin Bateman, and Margaret Carrow, individually and as natural mother of Edwin Bateman, (collectively, "Appellants") brought this action under 42 U.S.C. § 1983 against various defendants. As a result of prior rulings, the only remaining defendants in this case are Matthew McGill, Richard Blount, Douglas Fauls, and Donald Eslinger, in their official capacities, and Seminole County (collectively, "Appellees"). This appeal is from the district court's grant of summary judgment for Appellees in June 1994.
>
> Appellants contend that summary judgment was inappropriate because (1) Appellees failed to sustain their burden of production in moving for summary judgment, (2) there is a genuine issue of fact as to whether the actions of the individual defendants constituted deliberate indifference in violation of Bateman's Fifth Amendment rights as a pretrial detainee, (3) the alleged constitutional violation stemmed from the policies of Seminole County, and (4) the grant of summary judgment violated the law of the case as established by the district court's prior denial of summary judgment for Appellees. After reviewing the records, we conclude that Appellants' contentions are without merit.
>
> AFFIRMED.

The Eleventh Circuit never addressed the issue of the appropriate standard in § 1983 cases involving jail suicides of pretrial detainees.

Even assuming that the Eleventh Circuit applied the deliberate indifference standard, this Court should deny the Petition for Writ of Certiorari. In *Illinois v. Gates*, 462 U.S. 213 (1983), this Court considered addressing the question of whether the exclusionary rule should be modified. This Court decided not to decide the issue because it had not been pressed or passed upon in the court below. *Id.* at 217. The court below had applied the exclusionary rule as it existed. *Id.* at 222. This Court held that mere application of an existing rule without any real contest on the issue did not satisfy the "pressed or passed upon below" rule. *Id.* at 222-23. This Court then discussed the importance of the rule:

> Where difficult issues of great public importance are involved, there are strong reasons to adhere scrupulously to the customary limitations on our discretion. By doing so we "promote respect . . . for the Court's adjudicatory process [and] the stability of [our] decisions." Moreover, fidelity to the rule guarantees that a factual record will be available to us, thereby discouraging the framing of broad rules, seemingly sensible in one set of facts, which may prove ill-considered in other circumstances. In Justice Harlan's words, adherence to the rule lessens the threat of "untoward political ramifications" not foreseen at the time of our decision. . . . By following this course, we promote respect of the procedures by which our decisions are rendered, as well as confidence in the stability of prior decisions.

Id. at 224.

CONCLUSION

The question presented by Petitioners and left open by this Court in *City of Canton v. Harris*, 489 U.S. 378 (1989) is an important question and the conflict among the circuits does merit resolution. However, this case does not provide the appropriate vehicle for such resolution because the question was not pressed or passed upon below. It is precisely because of the importance of the issue that its resolution must await another day and a fully developed record. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JULIUS F. PARKER, JR.
JENNIFER PARKER LAVIA
THE PARKER LAW FIRM
2804 Remington Green Circle
Post Office Box 14436
Tallahassee, FL 32317-4436
(904) 385-4454

Attorneys for Respondents,
Eslinger, McGill,
Blount and Fauls

No. 95-628

In The

Supreme Court of the United States

October Term, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INDEX TO APPENDIX

Page

EXCERPTS OF INITIAL BRIEF OF PETITIONERS. . App. 1

App. 1

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DOCKET NO. 94-2850

BONNIE C. SABIA, individually and as Administratrix of the Estate of Edwin P. Bateman; and **MARGARET CARROW,** individually and as natural mother of Edwin P. Bateman,

Plaintiffs - Appellants,

vs.

SEMINOLE COUNTY, FLORIDA; MATTHEW McGILL, RICHARD BLOUNT, and **DOUGLAS FAULS,** in their official capacity of Guards at the Seminole County Jail; and **DONALD ESLINGER,** in his official capacity as successor to John E. Polk, Sheriff and Supervisor of the guards,

Defendant - Appellees.

On Appeal from the United States District Court
for the Middle District of Florida
Orlando Division

INITIAL BRIEF OF APPELLANTS

Rodney G. Gregory
Law Office of
Rodney G. Gregory
3900 Atlantic Boulevard
Jacksonville, Florida 32202
(904) 398-0012

Matthew P. Farmer
Farmer & Fitzgerald, P.A.
708 E. Jackson Street
Tampa, Florida 33602
(813) 228-0095

COUNSEL FOR APPELLANTS

* * *

ARGUMENT III

APPELLANTS HAVE DEMONSTRATED THAT THEIR DELIBERATE INDIFFERENCE CLAIM SHOULD BE PRESENTED TO A JURY

All three sets of defendants argue that the plaintiffs cannot survive summary judgment on their claim that the defendants were deliberately indifferent to Mr. Bateman's serious mental health needs. Authority from this court, however, indicates unequivocally that the facts of this case support a jury finding of deliberate indifference. (The Center defendants rely on *Howell v. Evans*, 922 F. 2d 712 (11th Cir.), which this court has since vacated.)

This court has had three recent occasions to address the pertinent legal standard regarding liability under 42 U.S.C. Section 1983 for suicides committed by pretrial detainees.

In *Edwards v. Gilbert*, 867 F. 2d 1271 (11th Cir. 1989), the court adopted the following standard:

> In a prisoner suicide case, to prevail under Section 1983 for violation of substantive rights, under either the eighth or fourteenth amendment, the plaintiff must show that the jail officer displayed "deliberate indifference" to the prisoner's taking of his own life.

Id. at 1274-75. The decedent in Edwards had been convicted, and was placed in a county jail to await sentencing. *Id.* at 1272. In the words of the Court, he "had never threatened or attempted suicide before his successful attempt." *Id.*

The *Edwards* court then observed that "[in the absence of a previous threat of or an earlier attempt to suicide, we know of no federal court in the nation or any other court within this circuit that has concluded that official conduct in failing to prevent a suicide constitutes deliberate indifference." *Id.* at 1275. *Edwards* concluded that no liability existed. The court, however, went on to describe a number of relevant factors not present in *Edwards* but, quite significantly, present in this case. For instance, the court observed that "[in this case, before [the prisoner's] death there was no mention by [him] *or anyone else* of suicidal tendencies." *Id.* (emphasis added). In sharp contrast, this case is replete with evidence that defendants were directly and explicitly apprised of Mr. Bateman's suicidal propensity. The *Edwards* court also acknowledged that "there was no evidence of unusual behavior." *Id.* Again, the facts of this case present a dramatic contrast. Finally, in finding that the defendants were entitled to qualified immunity, the *Edwards* court held:

> Because no court had ever held that acts materially similar to what these defendants did – leave a seemingly sleeping juvenile inmate, who had never threatened or attempted suicide and *who had never been considered a suicide risk,* in a secure cell for forty-five minutes with another sleeping juvenile – constituted deliberate indifference to the inmate's safety from self harm, we believe that a reasonable officer in each of the defendants' positions could have believed that he was acting consistently with the Constitution.

Id. at 1277 (emphasis added). The *Edwards* court, then, endorses a standard applying three different tests in determining whether liability exists for the commission of a suicide: whether officers knew that suicide was "attempted"; whether officers knew that suicide was "threatened ; or whether the inmate "had been . . . considered a risk."

The Eleventh Circuit returned to the question of jail suicide in *Popham v. City of Talladega*, 908 F. 2d 1561 (11th Cir. 1990). The *Popham* court expressly adopted the *Edwards* standard, observing, despite the fact that the decedent was a pretrial detainee (in contrast to the *Edwards* decedent, who had been convicted), that " 'deliberate indifference' to the prisoner's taking of his own life must be displayed." *Id.* at 1563. Like *Edwards*, the *Popham* court recognized as well that "[the standard requires a strong likelihood rather than a mere possibility that the self-infliction of harm will occur. . . . " *Id.*

The *Popham* court explained, in a particularly pertinent passage, that,

> In the context of jail suicides, an allegation of deliberate indifference must be considered in light of *the level of knowledge possessed by the officials involved, or that which they should have known, as to an inmate's suicidal tendencies.*

Id. at 1564 (emphasis added). Concluding that the particular jail officials did not possess sufficient knowledge, the court observed:

> The fact that he attempted to commit suicide two days earlier was unknown to the officials who arrested him and placed him in a holding cell. *When plaintiff visited her husband*

> *earlier in the evening, she failed to give police officers and jail officials notice of her husband's recent attempted suicide, which further permitted officials to be without the slightest suspicion that Popham might attempt to take his own life.* Some form of knowledge of the danger is required to support a Section 1983 action.
>
> The officials did not know that Popham threatened suicide from his jail cell. This threat was overheard and discounted as "drunk talk" by an old acquaintance of Popham's who occupied a nearby cell that evening. He made no attempt to notify authorities.

Id. (emphasis added). Because plaintiff in *Popham* failed to demonstrate any of the factors reflecting deliberate indifference, most importantly defendants' *knowledge* of the decedent's suicidal tendencies, the *Popham* court affirmed the district court's grant of summary judgment in favor of defendants.

In the third case of trilogy, however, this court, in *Greason v. Kemp*, 891 F. 2d 829 (11th Cir. 1990), found that defendants were not entitled to qualified immunity from liability for a prisoner's suicide. In *Greason*, the inmate was incarcerated at the Georgia Diagnostic and Classification Center for mental health evaluation and treatment. He was monitored both by the Center's psychiatrist, Dr. Fodor, as well as by his immediate subordinate, the mental health team leader, Mr. Brown. *Id.* at 832. These individuals discontinued Greason's antidepression medication. *Id.* When visited by his parents, however, Greason informed them that he had attempted suicide as a result of the discontinuance of the medication. *Id.* at 832. According to the *Greason* court:

> [The parents] meet with Brown following the visit, told him what their son had said, and urged Brown to have Greason transferred to a hospital, fearing that he might attempt suicide again.
>
> [Brown] told Greason's parents not to worry about their son, that he would "take care of it." Brown, however, did nothing. He neglected to contact Dr. Fodor; consequently, Fodor had no knowledge of Greason's suicide attempt. Brown could have placed Greason on "a suicide watch," a procedure in which suicidal inmates are placed in stripped cells and subjected to around-the-clock observation, but he made no effort to have Greason monitored.

Id. at 832-33. Greason hung himself twenty-four days later.

Addressing the conduct of Brown, the mental health team leader, the *Greason* court reasoned:

> The question here is a narrow one: whether Brown's failure to monitor Greason *after having been warned by Greason's parents and two inmates that Greason had tried to commit suicide* constituted deliberate indifference.
>
> Where prison personnel directly responsible for inmate care have knowledge that an inmate has attempted, or even threatened suicide, their failure to take steps to prevent that inmate from committing suicide can amount to deliberate indifference.

Id. at 835-36 (emphasis added). The court concluded that the district court's refusal to extend qualified immunity to Brown was appropriate.

Other courts have recognized the existence of the constitutional right to be free from deliberate indifference to a detainee's suicidal propensity. In *Partridge v. Two Unknown Police Officers of Houston*, 791 F. 2d 1182 (5th Cir. 1986), for instance, the court found that the "deliberate indifference" standard would create liability for defendants affording inadequate custodial care "of an inmate who might harm himself." *Id.* at 1187, in 20. In other words, the state's duty to provide medical care suggests that "liability under Section 1983 will lie under some circumstances even if the detainee or prisoner died by his own hand rather than the hand of another." *Id.* Similarly, the court in *Colburn v. Upper Darby Township*, 835 F. 2d 663 (3d Cir. 1988), held that:

> Of course we agree that custodial officials cannot be placed in the position of guaranteeing that inmates will not commit suicide. *On the other hand, if such officials know or should know of the particular vulnerability to suicide of an inmate. then the Fourteenth Amendment imposes on them an obligation not to act with reckless indifference to the vulnerability.*

Id. at 669 (emphasis added).

In *Buffington v. Baltimore County, Maryland*, 913 F. 2d 113 (4th Cir. 1990), the Fourth Circuit recently followed the general holding of *Greason* and distinguished a number of cases on which defendants rely. According to *Buffington*,

> [We have recently recognized that where police know that a pretrial detainee is on the verge of suicide, that psychological condition can constitute the kind of serious medical need to which

state officials must, under the due process clause, not be deliberately indifferent. In *Belcher v. Oliver*, 898 F. 2d 32 (4th Cir. 1990), we found no due process violation where a pretrial detainee hung himself with his belt after police officers placed him in a jail without removing his belt or shoes. Because the plaintiff in *Belcher* had presented "no objective evidence that [he] even had a serious need for such attention . . . [to] suicidal tendencies," *id.* at 35, we held that he had not stated a claim for violation of his substantive due process rights. In *Belcher*, we declined to impose on the police officers a duty to screen detainees for suicidal tendencies, but we did not imply that officers would have had no constitutional duty at all if they demonstrably knew of had reason to know that a suicide was imminent. Other courts of appeals have recognized this distinction and the viability of a claim for official indifference to known suicidal tendencies. *See Colburn v. Upper Darby Township*, 838 F. 2d 663, 669 (3d Cir. 1988) ("custodial officials cannot be placed in the position of guaranteeing that inmates will not commit suicide [but] if such officials know or should know of the particular vulnerability to suicide of an inmate," fourteenth amendment imposes duty not to act with "reckless indifference" to the risk); *Danese v. Asman*, 875 F. 2d 1239, 1244 (6th Cir. 1989) (no duty to screen pretrial detainee for suicidal tendencies, but "[the story might be different if the police were certain that [the detainee] would attempt suicide and just ignore it").

Id. at 120.

Even courts rejecting claims that officers' deliberate indifference to basic psychological needs resulted in the suicide of a detainee have recognized that, under the facts of this case, the result would have been different. In *Danese v. Asman*, 875 F. 2d 1239 (6th Cir. 1989), for instance, the court reasoned that "[the story might be different *if the police were certain that Danese would attempt suicide and just ignored it, or if Danese had told them he need psychological help.*" *Id.* at 1244 (emphasis added). In *State Bank of St. Charles v. Camic*, 712 F. 2d 1140 (7th Cir. 1983), the court expressly observed that, in removing the decedent's belt and shoelaces, the officials took precautions against the possibility of suicide. *Id.* at 11746 (also recognizing that defendants had no actual knowledge that decedent was a suicide risk). Likewise, the court in *Williams v. Borough of West Chester, Pennsylvania*, 891 F. 2d 458 (3d. Cir. 1989), acknowledged that the officers involved had no actual knowledge of the decedent's suicidal propensity. *Id.* at 465.

Thus, *Edwards* and *Popham* are obviously distinguishable from the facts of this case. Plaintiffs have satisfied the burden of demonstrating that the existence of deliberate indifference in this case is at question for the jury. Prior knowledge of suicidal tendencies is the bright-line rule in the case law. As set out in the Statement of the Case, plaintiffs have provided evidence of several instances of defendants' prior knowledge.

The affidavit of Patrick R. Anderson, Ph.D., also fully supports Appellants' contentions. [R2-177-178] In his summary, Dr. Anderson opinioned that there was

a defacto, unwritten custom of practice in regard to the care and control of juvenile detainees which failed to follow generally accepted practices in the field of American law enforcement and was not in compliance with Florida State law regarding the proper operation of such facilities . . . [R2-177-178]

* * *